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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.B., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

E071415

(Super.Ct.No. J255928)

OPINION

APPEAL from the Superior Court of San Bernardino County. Pamela P. King,
Judge. Reversed and remanded with directions.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Annie Featherman Fraser and A.
Natasha Cortina, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

In November 2014, then 15-year-old M.B. (minor) admitted to committing a robbery (Pen. Code, § 211). The juvenile court thereafter declared minor a ward of the court and placed him on formal probation in the custody of the San Bernardino County Department of Child and Family Services (CFS). When minor reached the age of majority, the court dismissed the robbery case, discharged minor from probation, and denied minor's request to seal his juvenile records.

On appeal, minor argues the matter should be remanded to the juvenile court to allow the court to exercise its discretion to seal his juvenile records pursuant to Welfare and Institutions Code¹ sections 781 and 786 because the court, in denying his request to seal his records, mistakenly believed he was categorically ineligible due to his robbery conviction. The People agree a remand is appropriate under the circumstances of this case. We reverse and remand for the juvenile court to consider the merits of minor's request to seal his juvenile records.

¹ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

II

FACTUAL AND PROCEDURAL BACKGROUND²

On June 28, 2014, while searching for two juveniles who had hit an individual with a bat, police officers saw a juvenile, identified as minor, sitting on a swing set at a park. The officers observed that minor had two large bulges in his sock. The officers approached minor and requested to speak with him. Minor jumped from the swing and took a fighting stance. After taking minor to the ground, the officers detained him. The officers found three small plastic baggies containing marijuana in minor's sock.

On September 2, 2014, while the victim was jogging, a person, without warning, punched the victim in the right eye, knocking him to the ground. A second suspect kicked the victim in his left hip. The suspects then stole the victim's iPhone and fled. As a result of the attack, the victim sustained two fractures on his right orbital, a detached right retina, and 20 stitches. Following an investigation, law enforcement determined minor was one of the suspects involved in the attack on the victim.

On October 6, 2014, a first amended section 602 petition was filed charging minor with misdemeanor resisting arrest (Pen. Code, § 148, subd. (a)(1); count 1); misdemeanor possession of less than an ounce of marijuana (Health & Saf. Code, § 11357, subd. (b); count 2); felony second degree robbery (Pen. Code, § 211; count 3); and felony assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4); count 4).

² The factual backgrounds of the underlying offenses are taken from the probation officer's reports.

On November 17, 2014, minor admitted to the robbery offense as alleged in count 3. The juvenile court found true the robbery allegation and dismissed the remaining counts.

On November 26, 2014, the juvenile court declared minor a ward of the court and placed him on formal probation on various terms and conditions in the custody of CFS.

On October 11, 2014, minor was observed attempting to steal a bag of recyclables from the victim's property. When the victim yelled at minor, minor dropped the bag and fled. Officers located minor hiding in a nearby bush.

On December 22, 2014, officers responded to a possible burglary in progress call. When they arrived at the scene, the officers observed minor walking away from the location. The officers instructed minor to stop and have a seat as he matched the description of the burglary suspect given by the caller. Minor, however, ran away from the officers. Eventually, the officers apprehended minor, and found four individually wrapped baggies containing methamphetamine on minor's person.

On December 23, 2014, a first amended subsequent section 602 petition was filed charging minor with misdemeanor attempted petty theft (Pen. Code, § 664/484(a); count 1); misdemeanor prowling (Pen. Code, § 647, subd. (h); count 2); felony possession for sale of a controlled substance, to wit, methamphetamine (Health & Saf. Code, § 11378; count 3); and felony resisting executive officers (Pen. Code, § 69; count 4).

On January 6, 2015, minor admitted to committing count 3. The juvenile court found the possession for sale of methamphetamine allegation true and dismissed the remaining charges.

On January 20, 2015, the juvenile court continued minor as a ward of the court and placed him in a group home with modified terms and conditions of probation, including serving time in juvenile hall.

On January 22, 2015, minor was granted dual status with CFS as the lead agency.

On March 9, 2015, minor was placed at Clearview Treatment Center (Clearview) with the probation department as the lead agency. Minor was read the terms and conditions of placement by his probation officer. Minor stated that he understood his placement terms.

By August 2015, minor's probation officer reported that minor had made "tremendous strides at Clearview," and requested CFS as the lead agency.

On August 11, 2015, minor successfully completed his placement program. As a result, CFS was designated as the lead agency and minor was placed in their custody while remaining on dual status with the probation department. Minor remained at Clearview until December 18, 2015, when he was placed in a CFS group home.

On July 19, 2016, a probation violation petition was filed alleging minor left his CFS group home without permission and failed to return by curfew. On that same day, a bench warrant was issued for minor's arrest.

On July 31, 2016, minor was taken into custody by police. Minor provided a false name to the police. Prior to being taken into custody, minor fled on foot when officers attempted to contact him.

On August 2, 2016, a subsequent section 602 petition was filed charging minor with misdemeanor giving false information to a police officer (Pen. Code, § 148.9, subd. (a)).

On August 3, 2016, minor admitted to violating probation as alleged in the July 19, 2016 petition. In return, the August 2, 2016 subsequent petition was dismissed.

On August 17, 2016, the juvenile court continued minor as a ward of the court and placed him in the custody of CFS with modified terms of probation.

On August 23, 2016, another probation violation petition was filed alleging minor left his CFS group home without permission and failed to return by curfew.

Because minor's whereabouts remained unknown, the juvenile court issued a warrant for his arrest.

One year later, on August 23, 2017, a bench warrant review hearing was held. At that time, the court was informed that minor had no subsequent law enforcement contact since the issuance of the bench warrant on August 23, 2016, and that minor's whereabouts remained unknown. The juvenile court continued minor as a ward of the court and also continued the warrant for minor's arrest. The matter was continued to August 23, 2018, for a bench warrant review hearing.

At the August 23, 2018 bench warrant review hearing, the court was informed that minor had reached the age of majority and his whereabouts remained unknown. The probation department also stated: “Although he successfully completed placement through the probation department, he has continued to abscond from the custody of CFS and thereby violate[d] his court-ordered terms and conditions. According to the San Bernardino County Jail Information Management System (JIMS), the youth has not been arrested within the County since absconding on 08/21/16. However, it is unknown whether he has remained law-abiding during this time.” The probation department therefore recommended the matter be continued to August 22, 2019, for a bench warrant review hearing. The juvenile court denied the probation department’s recommendation to continue the matter and dismissed the robbery case. The court also discharged minor from probation but denied minor’s request to seal his juvenile records pursuant to section 786 because robbery was ineligible under section 707.

On September 10, 2018, minor’s counsel asked the court to recall the bench warrant for minor’s arrest and to seal his juvenile records because minor had substantially completed his probation requirements under *In re A.V.* (2017) 11 Cal.App.5th 697 (A.V.). The court recalled the arrest warrant and terminated minor’s probation without making a finding as to whether minor had successfully or unsuccessfully completed probation. The court continued the matter as to minor’s counsel’s request to seal minor’s juvenile records.

On September 17, 2018, the juvenile court dismissed the August 23, 2016 probation violation petition in the interest of justice. However, the court denied minor's counsel's request to seal minor's juvenile records "due to charge being a PC 211, A WIC 707(B) true finding." The court stated, "And then at the last hearing you asked the Court to seal the record based on successful completion, but this was a violation of Penal Code section 211, so it cannot be sealed."

On October 1, 2018, the court held a special hearing regarding minor's counsel's request to seal minor's juvenile records. At that time, the juvenile court again refused to seal minor's juvenile records pursuant to section 782 because minor had not made a written motion to seal his records under sections 781 and 782 or given proper notice.

On October 3, 2018, minor's counsel filed a timely notice of appeal from the juvenile court's order denying minor's request to seal his juvenile records under sections 781 and 782.

On October 18, 2018, minor's counsel filed a written motion asking the juvenile court to seal his juvenile records under either section 781 or 782, because minor had substantially completed his probation requirements under *In re David T.* (2017) 13 Cal.App.5th 866 (*David T.*).

On October 23, 2018, the People filed a written opposition to minor's motion to seal his juvenile records. The People requested that the court deny minor's counsel's request because minor had suffered a disqualifying robbery conviction under section 707, subdivision (b). The People also argued that the court should not exercise its

discretion to dismiss the robbery conviction under section 782 because neither the “interests of justice,” nor the welfare of minor justified it, as he had suffered violations of probation, new charges while on probation, and had absconded for 23 months. The People further alleged that minor had since been arrested by the Ontario police.

At a special hearing on October 26, 2018, the juvenile court refused to seal minor’s juvenile records under sections 781 or 782, because it did not have jurisdiction after the notice of appeal had been filed.

On October 26, 2018, minor’s counsel filed a second timely notice of appeal from the juvenile court’s denial of minor’s request to seal his juvenile records.

III

DISCUSSION

Minor argues that the matter should be remanded to the juvenile court to allow the court to exercise its discretion to seal his juvenile records under sections 781 and 786. Specifically, he asserts that, in denying his request to seal his records, the court appeared unaware of its discretion and instead operated on the mistaken belief that minor was categorically ineligible due to his robbery conviction. Based on the court’s statements in denying minor’s motion to seal his records, the People agree a remand is appropriate in this case.

A. *Applicable Law and Standard of Review*

Section 781, subdivision (a), provides that an eligible juvenile offender may, at any time after the person has reached the age of 18, petition to seal his or her juvenile

records based on a showing that, since the termination of jurisdiction, the individual has not been convicted of a felony or any misdemeanor involving moral turpitude and rehabilitation has been attained to the satisfaction of the court. (*In re J.W.* (2015) 236 Cal.App.4th 663, 668.)

Before January 1, 2018, former section 781, subdivision (a)(1)(D), categorically barred the juvenile court from sealing a record in any case where the person committed a section 707, subdivision (b) offense when the person was 14 years of age or older. Robbery is listed in subdivision (b) of section 707. (See § 707, subd. (b)(3) [robbery].) Effective January 1, 2018, the Legislature amended, among other provisions, section 781, subdivision (a)(1)(D), to give the juvenile court discretion under certain circumstances to seal the records of juveniles who nevertheless committed an offense listed in subdivision (b) of section 707.

Section 782 affords a juvenile court broad discretion to dismiss a delinquency petition where dismissal would serve the interests of justice and the welfare of the minor. (*In re Greg F.* (2012) 55 Cal.4th 393, 419 (*Greg F.*)). Section 786, in turn, provides a streamlined dismissal and sealing process for minors who satisfactorily complete supervision or probation following a delinquency petition. (*In re G.F.* (2017) 12 Cal.App.5th 1, 7 (*G.F.*)).

“Although appellate courts normally review a juvenile court’s denial of a petition to seal juvenile records for an abuse of discretion, where, as here, the review involves determining the proper interpretation of a statute, we utilize the de novo standard of

review.” (*David T.*, *supra*, 13 Cal.App.5th at p. 871, citing *In re Jeffrey T.* (2006) 140 Cal.App.4th 1015, 1018.)

“Our fundamental task in construing a statute ‘is to ascertain the Legislature’s intent [and] effectuate the law’s purpose. [Citation.] We begin our inquiry by examining the statute’s words, giving them a plain and commonsense meaning. [Citation.] In doing so, however, we do not consider the statutory language “in isolation.” [Citation.] Rather, we look to “the entire substance of the statute . . . in order to determine the scope and purpose of the provision [Citation.]” [Citation.] That is, we construe the words in question “ ‘in context, keeping in mind the nature and obvious purpose of the statute’ [Citation.]” [Citation.] We must harmonize “the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.” [Citations.] We must also avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend. [Citations.]’ ” (*Greg F.*, *supra*, 55 Cal.4th at p. 406.)

B. *Analysis*

We address a very narrow legal question raised by minor of “[u]nder what circumstances, if any, can a juvenile court refuse to seal a minor’s juvenile delinquency records because it includes a robbery finding?” We find that the court erred in finding minor was categorically ineligible to have his juvenile records sealed under sections 781 and 786 because of the robbery finding.

Minor became eligible under section 781, subdivisions (a)(1)(D) and (a)(1)(E), because: (1) he had not been committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities; (2) he had attained 18 years of age; (3) he had completed his period of probation supervision related to that offense imposed by the court; and (3) his case had been dismissed. (See §§ 781, subds. (a)(1)(D)(i)(II) & (a)(1)(E).)

Presently, section 781, subdivision (a)(1)(D) states: “(D)(i) A petition to seal the record or records relating to an offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age and resulted in the adjudication of wardship by the juvenile court may only be filed or considered by the court pursuant to this section under the following circumstances: [¶] . . . [¶] (II) The person was not committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained 18 years of age, and has completed any period of probation supervision related to that offense imposed by the court.”

Section 781, subdivision (a)(1)(E) provides: “(E) Subparagraph (D) does not apply in cases in which the offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age was dismissed or reduced to a misdemeanor by the court. In those cases, the person may petition the court to have the record sealed, and the court may order the sealing of the record in the same manner and with the same effect as otherwise provided in this section for records that do not relate to an offense listed in

subdivision (b) of Section 707 that was committed after the person had attained 14 years of age.”

As both parties point out, although the amendment to section 781 was in effect at the time minor’s counsel asked the court to seal minor’s juvenile records, the court’s comments indicate that the court and counsel were operating under the former version of section 781 and not its current version. Specifically, at the September 17, 2018 hearing, the juvenile court stated: “at the last hearing you asked the Court to seal the record based on successful completion, but this was a violation of Penal Code Section 211, so it cannot be sealed. So that request is denied.” The court then elaborated, “It is a [section] 707(b).” While it is generally presumed that courts are aware of the correct statutory law, the court’s statements rebut that presumption. (See *People v. Thomas* (2011) 52 Cal.4th 336, 361 [“In the absence of evidence to the contrary, we presume that the court ‘knows and applies the correct statutory and case law.’ [Citations.]”]; see also Evid. Code, § 664 [“It is presumed that official duty has been regularly performed”].) In addition, the court did not make any finding concerning whether minor had successfully or unsuccessfully completed probation, later explaining that it did not have to make such a finding because “it is not required when there is a 707(b) offense.”

We agree with the parties that where, as here, it appears the court misunderstood the scope of its discretion it is appropriate to remand the matter to allow the court the opportunity to exercise its discretion, unless remand would be futile. (See e.g. *People v. McDaniels* (2018) 22 Cal.App.5th 420, 426-428 [ordering remand for resentencing where

trial court unaware of its sentencing discretion].) A remand may be futile where the court has indicated that it would not exercise its discretion even if it had discretion to do so. (*Id.* at p. 425.) Here, the juvenile court gave no such indication. In addition, the record does not indicate that the court would not have exercised its discretion had it been aware of its discretion to seal minor's juvenile records despite the robbery finding.

Accordingly, we reverse and remand the matter to allow the juvenile court to exercise its discretion.

Our conclusion is consistent with the purpose of the legislation, which was enacted to "better ensure[] that juveniles have a clear pathway to clearing their records, when in compliance with existing statutory and probationary requirements." (*A.V.*, *supra*, 11 Cal.App.5th at p. 707.) Accordingly, section 786 "authorizes the juvenile court to employ a streamlined, court-initiated procedure for dismissing juvenile delinquency petitions and sealing juvenile records . . . when a ward 'satisfactorily completes' probation or supervision, as long as the offense is not one listed in section 707, subdivision (b)." (*A.V.*, at p. 705.)

In a related argument, minor asserts that he is entitled to a remand for the court to consider whether to seal his records under section 786 because the court could have exercised its discretion under that provision if it had determined minor had successfully completed probation. However, here the court refused to make that determination because "it is not required when there is a 707(b) offense."

Section 786 provides that if a ward of the juvenile court “satisfactorily completes” formal or informal probation, “the court shall order the petition dismissed” and “shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice.” (§ 786, subd. (a); see *G.F.*, *supra*, 12 Cal.App.5th at p. 5.) Satisfactory completion of probation “shall be deemed to have occurred if the person has no new findings of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude during the period of . . . probation and if he or she has not failed to substantially comply with the reasonable orders of supervision or probation that are within his or her capacity to perform.” (§ 786, subd. (c)(1).)

Because we remand the matter related to minor’s section 781 argument, we need not address minor’s contention pursuant to section 786. Minor may renew his claims pursuant to section 786 in the juvenile court. At that time, the juvenile court will have the opportunity to determine whether minor had successfully completed probation.

In sum, we conclude that the juvenile court erred when it interpreted sections 781 and 786 to mean that minor’s admission of a section 707, subdivision (b) offense prevented the court from considering whether to seal minor’s juvenile records.

IV

DISPOSITION

The September 17, 2018 order of the juvenile court denying minor's motion to seal his juvenile records is reversed and the matter is remanded for the juvenile court to exercise its discretion and consider the motion on the merits.

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CODRINGTON
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.